

CHAPTER 3

HHS Form 653 - Requisition Reviews and Market Research

A. ACTIONS UNDER THE SIMPLIFIED ACQUISITION THRESHOLD

1. Micro-purchases

Micro-purchases are acquisitions of supplies or services (except construction) the aggregate amount of which does not exceed \$2,500. In the case of construction, the micro purchase limit is \$2,000 according to FAR 13.2. Micro-purchases may be awarded without competitive quotations if the contracting officer or individual appointed in accordance with FAR 1.603-3(b) considers the price reasonable. To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers. **Further, it is the policy of the HHS to use small businesses to the maximum extent practicable for micro-purchases.**

2. Small Business Set-Asides Using Simplified Acquisition Procedures

In accordance with FAR Part 13.003, every open market acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 but not over \$100,000, is statutorily reserved exclusively for small business concerns. Foreign purchases and purchases from required sources of supply such as Federal Prison Industries, Committee for Purchase from People Who Are Blind or Severely Disabled, mandatory Federal Supply Schedules and Government Printing Office and related supplies are exempt from this requirement.

If the contracting officer determines that there is not a reasonable expectation that quotations will be received from two or more responsible small business firms that are competitive in terms of market price, quality and delivery, the set-aside may be dissolved and the purchase completed on an unrestricted basis. The purchase order file must be documented with the reason for the unrestricted purchase as required by FAR Part 19.502-2.

B. ACTIONS OVER THE SIMPLIFIED ACQUISITION THRESHOLD

1. SBS and PCR Review

The SBS should review **all procurement actions** over the simplified acquisition threshold. SBS must also review all procurement actions under the simplified action threshold not in compliance with the statutory set aside for small businesses. In accordance with FAR 19.4, the SBA Procurement Center Representative (PCR) is responsible for reviewing all procurement actions over the micro purchase threshold in which an unrestricted procurement is contemplated. The review is made through the

use of the Small Business Review Form - HHS Form 653 (See Appendix 3-1). OPDIVS may establish lower review thresholds. Requisitions and Statements of Work should be attached to the Small Business Review Form and provided to the SBS for review upon receipt in the contracting office. In all unrestricted requirements, the Small Business Review Form must be submitted and approved by the SBS and the PCR prior to announcement of the acquisition in the FedBizOpps. The SBS may recommend that the procurement be set-aside for one of the Small Business programs. The original of the completed review shall be placed in the contract file.

If the contracting officer rejects a recommendation of the SBS or PCR, written notice shall be provided to the Director, OSDDBU, within 5 working days. The notice shall include complete information on the proposed acquisition, including its history, a copy of the SBS review and the contracting officer's reason(s) for rejecting the recommendation. Disagreements between the CO and the SBS, may be referred to the Director, OSDDBU. Should resolution not be reached, the SBA PCR will render a third party determination.

The SBS shall maintain a file of reviews conducted each fiscal year, with copies of the review, the requisition, pertinent statements of work, and lists of recommended sources. Reviews shall be numbered sequentially, and include a fiscal year designator (e.g., 04-1, 04-2, etc).

2. PCR Appeals

The contracting officer may reject the SBS or PCR recommendation for a set-aside. The PCR may concur with the CO's decision or appeal the case in accordance with the procedures in FAR 19.505. The appeal may be elevated to the level of the head of the OPDIV. If resolution is not to the satisfaction of the PCR, the appeal can be elevated to the SBA Administrator and the Secretary of the HHS. The Secretary's decision is final.

In order to conduct an effective review, the PCR may meet with contracting and/or technical personnel. Small business sources may be provided by the PCR. If the PCR files an appeal on any procurement, the SBS and/or CO shall promptly notify the Director, OSDDBU.

C. MARKET RESEARCH AND PRE-SOLICITATION NOTICES OR "SOURCES- SOUGHT"

This section provides Contracting Officers tools to accomplish the maximum utilization of small businesses in the Department's acquisition program. This guidance clarifies what areas are mandatory policies and which ones are not. It also demonstrates that Contracting Officers need not compromise the customers' need to foster small business participation. The Contracting Officer has tremendous discretion as to how they choose to full fill acquisition requirements. This policy guidance simply provides tools to maximize small business participation while efficiently and effectively procuring the Department's goods and services.

Background

Contracting officers have tremendous discretion in determining how they will proceed with any acquisition. The use of market research and sources sought should be used by Contracting Officers to provide small businesses information on what our Department is buying. Responses to public notices by small businesses also provide Contracting Officers and Program officials' information on the current trends in industry. This information can only help but to assist in obtaining the best value in goods and services for the American taxpayer.

Market Research

Market research is done to determine if commercial items, or non-developmental items, are available to meet the Government's needs or if commercial items could be modified to meet the Government's needs.

FAR Part 10 emphasizes that Agencies **SHALL** conduct market research on an ongoing basis, and take advantage to the maximum extent practicable of commercially available market research methods, to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency.

Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

Techniques for Conducting Market Research

The following are some techniques that may be used to conduct market research.

1. Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.
2. Reviewing the results of recent market research undertaken to meet similar or identical requirements.
3. Publishing formal requests for information in appropriate technical or scientific journals or business publication. (*Sources Sought or pre-solicitation notice.*)
4. Querying Government databases that provide information relevant to agency acquisitions.
5. Participating in interactive, on-line communication among industry, acquisition personnel, and customers.
6. Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

7. Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.
8. Conducting interchange meetings or holding pre-solicitation conferences to involve potential offerors early in the acquisition process.

Purpose and use of the Pre-Solicitation or Sources Sought Notice

Any notice about a requirement prior to the release of the solicitation falls into the category of a presolicitation notice. For the purpose of soliciting for sources, the term of art is often referred to as a "Sources Sought". Other Pre-solicitation notices may be used to announce public meetings, obtain industry comments on proposed request for proposals, or for any notice that the Contracting Officer may deem appropriate.

The Government's intent to purchase a product or service is officially set forth in a public announcement, via FEDBIZOPPS. Public notices provide an impartial venue for the public to be given an opportunity to respond. A fair, equitable and impartial review of the responses received will provide the necessary justification for all future acquisition decisions and strategies for the particular requirement. The review must be adequately documented. *Open and fair acquisition practices provide small businesses the maximum practicable opportunity to compete on our requirements.*

FAR 5.204 Pre-solicitation Notice - states that contracting officers shall publicize pre-solicitation notices in the FEDBIZOPPS. Synopsizing is still required prior to issuance of any resulting solicitation and **is a mandatory step**. The pre-solicitation notice is used to ask questions of industry on the acquisition strategy proposed, to determine if the government's described needs can feasibly be met and to determine the extent that small businesses are available to provide solutions to government needs. The notice should be posted in sufficient time prior to the issuance of the solicitation to afford the government the quality of feedback it needs. Notices should:

1. Concisely describe the nature and volume of the proposed work,
2. State the location(s) of where the work will be performed,
3. Delineate criteria, including any go/no-go items,
4. If the sole purpose of the notice is to determine if two or more small businesses are in the industry, the notice should specifically ask for responses from all categories of small businesses (small, small disadvantaged, 8(a), women-owned, HUBZone and Service-Disabled Veteran-Owned businesses,
5. Be worded in such a way that it does not restrict or limit competition, and
6. Require that responses to the notice be limited to no more than 5 pages.

Caution

Pre-solicitation notices should **not be configured into mini-solicitations** where capability statements are evaluated and determined technically unacceptable similar to proposals. FAR 10.001(b) states that when conducting market research, agencies should not request potential sources to submit more than the minimum information necessary. When the agency is requesting information, the information requested is used to plan the acquisition strategy. Potential sources are not expected to submit the level of detail required in the actual solicitation. If the only purpose of the notice is to determine if two or more small businesses **are capable of proposing on the project**, reviewers of responses to pre-solicitation notices need only make that determination. **Items such as resumes, cost proposals and detailed technical solutions should not be required and are not appropriate at this stage in the process. Reviewers should not make determinations on technical acceptability based on information received in response to a pre-solicitation notice. Reviewers must understand that their only purpose for evaluating responses to pre-solicitation notices with regard to small business set-asides is to decide if the businesses are capable not if their submission is acceptable.**

Acquisition Planning and Competition

It is the policy of the Federal Government that Agencies perform acquisition planning and conduct market research for **all acquisitions** in order to promote and provide for -

1. Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, non-developmental items, to the maximum extent practicable; and
2. Full and open competition or, when full and open competition is not required in accordance with FAR Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

It is also the policy of the Federal Government, with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. **Contracting officers shall provide for full and open competition through use of the competitive procedure(s) that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently.**

D. GWAC’S IDIQ, AND GSA SCHEDULE PURCHASES

FAR Part 6.001 describes the specific exceptions to conducting full and open competitions. It is important to note that competition and acquisition planning are required for all contract actions. Task and delivery orders under Government-wide Acquisition Contracts (GWAC’s) may be defined as contract actions except when the orders are placed under a contract that -

- was awarded under FAR Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or
- was awarded under FAR Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

FAR Part 6 does not apply when orders are placed against task order and delivery order contracts were entered into pursuant to Subpart 16.5.

FAR Part 19 does not apply when orders are placed against task order and delivery order contracts when the contracts were entered into pursuant to Subpart 16.5.

Contracting officers must verify that the conditions stipulated above apply before proceeding with an award under a GWAC when contemplating the issuance of an order.

Notwithstanding the noted exceptions to full and open competition, **market research and acquisition planning are required for all acquisitions**. Therefore Contracting Officers should use the same market research techniques for the award of orders under GWAC’s and GSA Schedule orders as they would for Contracts as defined in FAR Part 5.001.

While the Small Business Administration’s Program’s as described in FAR Part 19 are not mandatory when using multiple award contracts, the requirement to consider small businesses as sources of supply have not been waived. Contracting Officers are still free to provide small businesses the maximum practicable opportunity to compete – even under multiple award schedules – at the Contracting Officer’s discretion.

In the conduct of market research and acquisition planning, **FAR 7.105(b)** requires the government include consideration of small business, HUBZone small business, small disadvantaged business, women-owned small business and service disabled veteran-owned concerns (see FAR Part 19). Finally the acquisition plan must address the extent and results of the market research and indicate their impact on the various elements of the plan (see FAR Part 10).

E. SMALL BUSINESS SET-ASIDES AND ACQUISITION PLANNING

Small Business Set-Aside is the preferred acquisition strategy over \$100,000 when there are two or more responsible small business concerns that offer the product or services and the award will be made at a fair market price (19.502-2). This is known as “the rule of two”.

Acquisitions exceeding \$2,500 but not over \$100,000 are automatically set-aside for small businesses when there is a reasonable expectation that two or more offers will be received from responsible small business concerns that are competitive in terms of market price, quality and delivery.

FAR 15.201 (a) Provides extensive information on how contracting officers should conduct exchanges with industry before receipt of proposals. In addition FAR 19.202-2 provides Contracting Officers instruction on the best methods of locating Small Business Sources. These methods include but are not limited to the use of pre-solicitation notices and other sources.

A wide range of experts should participate in market research. A team approach is the best choice, as many functional areas need to work together during the market research process. The team may be composed of: Project Officers, End Users, Technical Specialists, Logistic Specialists, Scientific Researchers, Testing Specialists, Cost Analysts, Legal Counsel, Small Business Specialists, Contracting Officers and Contract Specialists. Conserve time and energy by making sure that all individuals responsible for the operational requirement are on the team at the beginning.

In accordance with FAR Part 10, when conducting market research, agencies should not request potential sources to submit more than the minimum information necessary. The pre-solicitation notice or other market research tools should be used to determine if a requirement should be set-aside for small business. Capability statements can be requested by a Contracting Officer with in the pre-solicitation notice to assist the team of evaluators and experts in making a determination on the acquisition strategy. It is not to be used as a tool to evaluate and make determinations on the acceptability of a small business for the requirement. No business should be required to submit a “mini-proposal” or excessive documentation to a pre-solicitation notice. The only question to be answered is - Should the acquisition be limited to competition among small businesses or not? To use the pre-solicitation or sources sought for any other purpose is inappropriate and could be perceived as violating the intent of FAR Part 10.

Contract Bundling and Market Research

No discussion on small business is complete until consideration is given to an acquisition strategy that may include the consolidation or “bundling” of contracts or orders in to one requirement.

If an agency contemplates awarding a bundled contract, the agency -

1. When performing market research, should consult with the local Small Business Administration procurement center representative (PCR) or, if a PCR is not assigned to the procuring activity, the SBA Office of Government Contracting Area Office serving the area in which the procuring activity is located; and
2. At least 30 days before release of the solicitation -
 - Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and
 - Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

Conclusion

It is the policy of the Department of Health and Human Services to encourage the maximum practicable utilization of small businesses in its acquisition program. It is hoped that this policy promotes the use of pre-solicitation notices, as a method to determine the viability of small businesses to meet the acquisition needs of the Agency.